



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/551,827	07/31/2006	Takeyuki Shiomi	3335-00013	3994

26753 7590 03/04/2009  
ANDRUS, SCEALES, STARKE & SAWALL, LLP  
100 EAST WISCONSIN AVENUE, SUITE 1100  
MILWAUKEE, WI 53202

EXAMINER
----------

HAND, MELANIE JO

ART UNIT	PAPER NUMBER
----------	--------------

3761

MAIL DATE	DELIVERY MODE
-----------	---------------

03/04/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/551,827	<b>Applicant(s)</b> SHIOMI ET AL.	
	<b>Examiner</b> MELANIE J. HAND	<b>Art Unit</b> 3761	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 December 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-51 is/are pending in the application.
- 4a) Of the above claim(s) 2,6 and 11-51 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-5 and 7-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 September 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>8/21/06,10/23/08</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election of species (2), claims 1, 3-5 and 7-10, in the reply filed on December 4, 2008 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). It is noted that claim 6 was listed as being drawn to the species of Fig. 5, however upon further review of applicant's specification, an absorbent member with notched corners is a feature of Fig. 6A and is thus not directed to the elected embodiment.
2. Claims 2, 6 and 11-51 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim.

### ***Priority***

3. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Information Disclosure Statements***

4. The information disclosure statements (IDS) submitted on August 21, 2006 and October 23, 2008 are in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statements are being considered by the examiner.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 3-5 and 7-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Kawaguchi (JP 2001-224617-English translation).

With respect to **claim 1**: Kawaguchi discloses an absorbent pad for men comprising a liquid permeable top sheet in the form of bodyside surface sheet 3, a back sheet in the form of watertight sheet 1 and an absorbent member 2 arranged between the top sheet 3 and the back sheet 1. (Fig. 5, ¶¶0006,0010,0011) A pair of liquid impermeable gather sheets on the inside of the extension of sheet 1 that encases the elastics 4 face each other on said top sheet 3. A liquid permeable auxiliary sheet indicated generally at character 8 in Fig. 5 is provided to cover said top sheet and extend from a side of one of said gather sheets toward the other one of said gather sheets between said top sheet 3 and said gather sheets. The auxiliary sheet is formed so that an extension side portion of the auxiliary sheet stands upright on a wearer's side (Fig. 5), and an opening for inserting male genitals is formed by the standing extension portion of the auxiliary sheet and said other gather sheet. This opening is considered herein to be an opening for inserting male genitals, as the article itself is intended to directly absorb urine and thus fit directly over the genitalia of the wearer.

Art Unit: 3761

With respect to **claim 3**: The auxiliary sheet is provided separately from said top sheet 3. (Fig. 5)

With respect to **claim 4**: The back sheet 1 is liquid impermeable. (¶0011)

With respect to **claim 5**: Kawaguchi discloses laminating a nonwoven fabric 7 for sweat absorbency, i.e. it is liquid permeable, and thus renders the back sheet liquid permeable inasmuch as liquid may permeate the sheet 1. (¶0011)

With respect to **claim 7**: An elastic member 10 disclosed by Kawaguchi is provided on a tip end of said auxiliary sheet. (Fig. 5, ¶0012)

With respect to **claim 8**: Applicant has not explicitly and clearly defined the phrase “unevenly distributed toward one of said gather sheets”. Therefore the claim is given its broadest reasonable interpretation. The opening formed by a tip end of said auxiliary sheet and a tip end of said other gather sheet is unevenly distributed toward one of said gather sheets inasmuch as the gather sheet extends farther out than the auxiliary sheet and the auxiliary sheet of Kawaguchi meets the limitation of standing upright on a wearer's side toward the gather sheet.

With respect to **claim 9**: Applicant has not explicitly and clearly defined the phrase “generally in the same position”. Therefore the claim is given its broadest reasonable interpretation. The tip end of said other gather sheet and the tip end of said auxiliary sheet are generally at the same position inasmuch as they appear to extend at the same angle from the side of the article. (Fig. 5)

With respect to **claim 10**: Applicant has not explicitly and clearly defined the phrase “generally in the same position”. Therefore, the claim is given its broadest reasonable interpretation. The tip end of said one gather sheet and the tip end of said auxiliary sheet are generally at the same position inasmuch as they are vertically aligned as seen in Fig. 5.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELANIE J. HAND whose telephone number is (571)272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Melanie J Hand/  
Examiner, Art Unit 3761

Application/Control Number: 10/551,827  
Art Unit: 3761

Page 6